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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

MDD/145847

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 29, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau (DDB) in regard to Medical Assistance, a hearing was held on January 29, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals (DHA) has jurisdiction to make a determination on the merits of Petitioner's application for disability -based Medicaid, where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

NOTE: With Petitioner's permission, ALJ Ishii conducted further investigation into the procedural history of Petitioner's case. The following exhibits were added to the record:

DHA decision dated March 26, 2012 – Exhibit 2  
Notices regarding termination of Petitioner's benefits in 2011 – Exhibit 3  
Cares Request for Medicaid – Exhibit 4  
E-mail from Gail Mathison from DDB – Exhibit 5  
E-mail from Kristin Walter (Kenosha County) – Exhibit 6

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: DDB file

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.
2. Petitioner had been previously found disabled and eligible for disability-based Medicaid (hereinafter referred to as MA). After a review of her case in November 2011, the Disability Determination Bureau (the DDB) found Petitioner to be “Not Disabled” and terminated her MA, effective December 1, 2011. (Exhibit 2 and 3)
3. The DDB’s determination was based upon a July 6, 2011 decision by the Social Security Administration (SSA) finding Petitioner to be NOT disabled, for purposes of receiving Social Security Disability Income (SSDI). (Exhibit 2)
4. Petitioner filed a new application for Social Security Disability Income (SSDI) on December 6, 2011, which was denied by the Social Security Administration (SSA) on February 8, 2012. (Exhibits 1 and 2)
5. The county agency sent a CARES request to the DDB, indicating that Petitioner filed an application for disability-based MA on April 11, 2012. (Exhibit 4) Neither the DDB nor the county agency have a copy of a new application for MA with the April 11, 2012 date. (Exhibits 5 and 6) However, the DDB treated the referral as a new application and for the purposes of this hearing, it shall be treated as such. (See Exhibit 1)
6. On September 28, 2012, the DDB sent Petitioner a notice, denying her application for MA. (Exhibit 1, DDB file)
7. On October 29, 2012, Petitioner filed a request for reconsideration, asserting depression anxiety, back pain, which became more severe after she fell down the stairs and fibromyalgia. (Id.)
8. On December 11, 2012, the DDB upheld its determination and forwarded Petitioner’s file to DHA for review. (Exhibit 1, DDB file)
9. Petitioner also filed a request for reconsideration of the February 8, 2012 denial of her application for SSDI. On September 10, 2012, the SSA again denied Petitioner’s application for SSDI, finding her NOT disabled, after considering claims related to depression, anxiety, osteoarthritis, bursitis, fibromyalgia, seizures, bi-polar disorder, headaches (caused by a fall), back pain and blurry vision. (Id.)

### **DISCUSSION**

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards under Title XVI. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes is binding on Wisconsin’s Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, when there is a decision of “not disabled” by the SSA, there is no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or

- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
- (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

*42 CFR 435.541(c)(4)(emphasis added).*

Applying the above criteria to Petitioner's case:

- i) The conditions Petitioner described in her October 2012 request for re-consideration, are the same conditions that were considered by the SSA in reviewing Petitioner's application for SSDI.
- ii) The application for MA is NOT more than 12 months *after* the most recent SSA determination. The initial denial by SSI was in February 2012; Petitioner re-applied for MA in April 2012, the SSA found Petitioner to be not disabled in September 2012.
- iii) Although Petitioner testified that her condition has gotten worse since the September 2012 denial of her application for SSDI, the gravity of her complaints are of a similar nature to what the SSA took into consideration. Further, Petitioner is not alleging a new period of disability. It is Petitioner's contention that she is and has been disabled for years.

Based upon the foregoing, it is found that Petitioner does not meet any of the exceptions enumerated above. Consequently, the SSA's decision is binding, and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability -based Medicaid benefits.

### **CONCLUSIONS OF LAW**

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

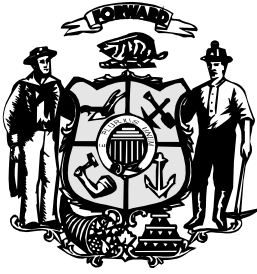
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 7th day of February, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 7, 2013.

Kenosha County Human Service Department  
Disability Determination Bureau